Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

XXX,[1]
Accused-Appellant.

G.R. No. 245926

Present:

GESMUNDO, *C.J.*,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

JUL 25 2023

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DECISION

GESMUNDO, *C.J.*:

The allegation in the information charging the accused of Qualified Rape under Article 266-B(1) of the Revised Penal Code (*RPC*), should be precise as to the relationship between the offender and the victim. The allegation cannot be stated in the alternative by using the disjunctive term "or."

The present Appeal[2] seeks to reverse and set aside the November 29, 2018 Decision[3] of the Court of Appeals, Cagayan de Oro City (*CA*) in CA-G.R. CR HC No. 01797-MIN, which affirmed the November 24, 2017

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1 Pursuant to Republic Act No. 7610, Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC, the identity of the victim or any information which could establish or compromise the victim's identity including those of the immediate family or household members, shall be withheld.

2 Under Sec. 2, Rule 125 in relation to Sec. 3, Rule 56 of the Rules of Criminal Procedure.

3 *Rollo*, pp. 5-16; penned by Associate Justice Tita Marilyn Payoyo-Villordon and concurred in by Associate Justices Edgardo T. Lloren and Oscar V. Badelles.

Decision[4] of the Regional Trial Court of Cagayan de Oro City, Branch 19 (*RTC*), convicting XXX (*accused-appellant*) of Qualified Rape under Art. 266-A in relation to Art. 266-B of the RPC, as amended by Republic Act (*R.A.*) No. 8353,[5] otherwise known as "The Anti-Rape Law of 1997."

Antecedents

The Information[6] dated July 23, 2015, charged accused-appellant with Qualified Rape, committed as follows:

> Sometime on 24 February 2015 around midnight, at [redacted], Misamis Oriental, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, knowing full[y] well the minority of his first cousin or relative within the third civil degree of consanguinity, through force and intimidation and through grave abuse of authority, did then and there, willfully, unlawfully, feloniously insert his penis into the vagina of "AAA", 16 [sic] years old, without her consent, to her damage and prejudice.
>
> The qualifying aggravating circumstance enumerated in paragraph 1 of Article 266-B of the Revised Penal Code is attendant in the commission of the offense that is – the offended party is below eighteen (18) years old and the offender is a relative within the third civil degree [of] consanguinity.
>
> CONTRARY TO Article 266-A in relation to Article 266-B of the Revised Penal Code.[7]

Accused-appellant was arraigned on October 22, 2015 wherein he entered a "not guilty" plea. During pre-trial, the parties stipulated on the following: (1) identity of accused-appellant; (2) accused-appellant is a relative within the third civil degree of consanguinity of AAA; and (3) AAA was examined by a physician at the Northern Mindanao Medical Center based on a Medical Certificate with code M-OBG-W-2015-002-870172.[8] Trial on the merits ensued thereafter.

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4 CA *rollo*, pp. 29-37; penned by Judge Evelyn J. Gamotin-Nery; docketed as CR-FMY Crim. Case No. 2015-219.

5 Entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes."

6 Records, pp. 4-6.

7 Id. at 4.

8 CA *rollo*, p. 30.

Version of the prosecution

The prosecution presented the following witnesses: AAA, private complainant; BBB, mother of AAA; and CCC, the younger brother of AAA.

AAA testified that she was living with her grandparents and her father, DDD, in [redacted], Misamis Oriental, when the rape incident occurred. She narrated that on February 24, 2015 at around 5:00 p.m., her cousin, accused-appellant, arrived at the house of her grandparents to charge his cellphone. He left the house after doing so.[9]

Accused-appellant returned around midnight and again asked if he could charge his cellphone. AAA, who was sleeping at the ground floor of the house, opened the door and allowed him to enter. She then went back to sleep. At that time, AAA's father was not around because he was attending a wake, while her grandparents were sleeping on the second floor.[10]

AAA was later awakened and surprised when she found accused-appellant already lying beside her. He then proceeded to touch her breasts and other parts of her body, covered her mouth, and undressed her. She claimed that after accused-appellant took off his clothes, he inserted his penis into her vagina. She shivered in fear and wanted to shout, but accused-appellant continued to cover her mouth.[11] She alleged that accused-appellant threatened to kill her and her father if she would report or tell anybody what happened.[12] Accused-appellant then left while AAA cried out of fear, and felt pain in her vagina. Thereafter, AAA received a text message from accused-appellant which reads: "*AYAW PAG SABA MASKI KINSA! KUNG MAGSABA KA PATYON TA KA! UG ANG IMONG PAPA!*" (*Don't report to anyone! If you do, I will kill you and your father!*)[13]

CCC narrated that at around 10:00 a.m. on February 28, 2015, he received a text message from AAA saying that accused-appellant raped her. CCC then told their mother, BBB, who called and instructed AAA to go to her house in [redacted], Misamis Oriental.[14] AAA obliged. BBB then accompanied AAA to the local police station to report the matter. They were then advised to go to the Northern Mindanao Medical Center where

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9 Records, pp. 67-68.
10 Id. at 68-69.
11 Id. at 68.
12 TSN, July 21, 2016, p. 10.
13 Records, pp. 68-69.
14 Id. at 82; CA *rollo*, p. 31.

AAA presented herself for medical examination.[15] The Medical Certificate[16] issued by the hospital indicated that AAA had an annular hymen with complete laceration at the 4 and 6 o'clock positions.

Version of the defense

The defense presented two witnesses: accused-appellant and his sister, YYY.

Accused-appellant denied the allegations and testified that he was at the house of his cousin, WWW, in [redacted], Misamis Oriental, from 4:30 p.m. on February 24, 2015 until 4:30 a.m. the following day, to celebrate the birthday of WWW's son.[17] He claimed that WWW fetched him from his residence in [redacted] using a motorcycle, and they drove 30 minutes to reach WWW's house in [redacted]. WWW also brought him back to his house the following day. On cross-examination, accused-appellant confirmed that AAA is his cousin because his mother and AAA's father are siblings.[18]

On the other hand, YYY testified that she was in WWW's house in [redacted] on the night of February 24, 2014 to attend the birthday celebration of WWW's son. She confirmed that accused-appellant attended the celebration and that it was WWW who brought him to the celebration.[19]

Ruling of the RTC

On November 24, 2017, the RTC rendered its Decision finding accused-appellant guilty of Qualified Rape beyond reasonable doubt, and sentenced him to *reclusion perpetua* in lieu of the death penalty, *viz.*:

> **ALL THE FOREGOING CONSIDERED**, the Court finds accused [XXX] guilty beyond reasonable doubt of the crime of Qualified Rape as defined under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 (Anti-Rape Law of 1997), and for which he is imposed the penalty of *reclusion perpetua*, in consonance with Republic Act No. 9346 which prohibits the imposition of the death penalty.
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> [XXX] is further ordered to pay "AAA"

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15 Records, p. 136.
16 Id. at 152.
17 Id. at 161-162.
18 TSN, March 17, 2017, pp. 41, 43-46.
19 Records, pp. 175-177.

1 [₱]100,000.00 as civil indemnity;
2 [₱]100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof[;] and
3 [₱]100,000.00 as exemplary damages to set an example for the public good.

All damages awarded shall earn legal interest at the rate of 6% per annum from the date of finality of judgment until fully paid.

IT IS SO ORDERED.[20]

The RTC held that the prosecution was able to establish all the elements of Qualified Rape: (1) AAA positively identified accused-appellant as the one who forcibly had sex with her; (2) the relationship of accused-appellant and AAA as within the third civil degree of consanguinity was stipulated by the parties; (3) based on the birth certificate of AAA, she was only 15 years old at the date of the incident.[21]

The trial court also rejected accused-appellant's alibi, not only on account of AAA's positive testimony, but also because it was not physically impossible for him to be in the place of the incident since the location of the birthday celebration was only 30 minutes away.[22]

Aggrieved by the ruling, accused-appellant timely filed a Notice of Appeal[23] which the RTC gave due course on December 4, 2017.[24]

Ruling of the CA

In the now assailed Decision, the CA affirmed the RTC that all the elements of Qualified Rape are present. It also held that AAA was only 15 years old at the time of the incident based on her birth certificate, and that there is no dispute that being her cousin, accused-appellant is her relative within the third degree of consanguinity, which was also stipulated by the parties.[25] The CA also affirmed the correctness of the award of damages which conformed with recent jurisprudence. Hence, the CA decreed:

ACCORDINGLY, the Appeal is **DENIED**. The assailed Decision dated November 24, 2017 of the Regional Trial Court, Branch 19, Cagayan de Oro City in CR-FMY Criminal Case No. 2015-219 is **AFFIRMED *in toto*.**

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20 CA *rollo*, pp. 36-37.
21 Id. at 34-36.
22 Id. at 35.
23 Id. at 8-9.
24 Id. at 10.
25 *Rollo*, pp. 10-11.

SO ORDERED.[26]

Dissatisfied by the decision, accused-appellant filed a Notice of Appeal,[27] which the CA gave due course.[28]

Issue

On July 17, 2019, the Court required both parties to file their respective supplemental briefs.[29] Both parties filed their respective Manifestations[30] stating that they are adopting the briefs they filed with the CA.

In his Appellant's Brief,[31] accused-appellant submits that –

> THE COURT [*A QUO*] GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSES CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[32]

Based on this lone error, accused-appellant submits that: (1) the identity of the perpetrator is highly dubious; (2) the guilt of accused-appellant was not proven beyond reasonable doubt; (3) AAA failed to meet the test of credibility; (4) the defense of alibi is a plausible excuse; and (5) the constitutional presumption of innocence was not overturned.[33]

Accused-appellant maintains that AAA's identification of him as the perpetrator is unreliable. He points to AAA's testimony wherein she narrated not having seen his face because there was no light, but only believed it was him because of his voice. AAA was also unable to present the supposed text message that she received from accused-appellant because she no longer had her cellphone. He further claims that AAA failed to identify him in open court.[34]

In addition, accused-appellant points out that the Information charged him of resorting to "force, threat, or intimidation and by means of grave

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26 Id. at 15.
27 Id. at 17-19.
28 Id. at 20.
29 Id. at 22-23.
30 Id. at 25-30, 31-34.
31 CA *rollo*, pp. 12-28.
32 Id. at 14.
33 Id. at 16-17.
34 Id. at 18-19.

abuse of authority"[35] in committing the crime of rape, however, AAA's judicial affidavit proved otherwise. There was no indication that he uttered threatening words, or used force against AAA, or even exerted authority over her. He also maintains that the simple assertion made by AAA that he inserted his penis, without any other details, cannot establish carnal knowledge.[36] He doubts AAA's actuations after the alleged rape incident as they appear to negate the occurrence of rape.[37]

On the other hand, the Office of the Solicitor General (OSG) counters that all elements of the crime of Qualified Rape are present: (1) AAA was 15 years old when the rape occurred; (2) the parties stipulated that accused-appellant is AAA's cousin, or a relative within the third degree of consanguinity; (3) AAA had categorically asserted that accused-appellant had carnal knowledge of her against her will; and (4) AAA was asleep when accused-appellant started to ravish and force himself upon her, and even threatened her thereafter.[38]

The OSG further maintains that accused-appellant failed to prove that it was physically improbable for him to be at the place of the crime because WWW's residence was only 30 minutes away from the house of AAA's grandparents. Moreover, the testimony of his sister, YYY, cannot be accorded credence because it did not come from a disinterested witness.[39]

Aside from reiterating all his arguments in his Reply Brief,[40] accused-appellant additionally contends that although the parties stipulated on the medical certificate issued by the Northern Mindanao Medical Center, the same only pertained to the existence of the document, and not to the veracity of its contents.[41]

The lone issue for the Court to settle is whether the prosecution was able to establish accused-appellant's guilt beyond reasonable doubt for having committed the crime of Qualified Rape against AAA, a minor and a relative within the third degree of consanguinity.

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35 Id. at 20.
36 Id. at 20-22.
37 Id. at 22-23.
38 Id. at 87.
39 Id. at 88-89.
40 Id. at 93-101.
41 Id. at 98.

The Court's Ruling

Accused-appellant cannot be convicted of Qualified Rape, but only of Simple Rape under paragraph 1 of Art. 266-A of the RPC.

The prosecution established the fact of rape.

Art. 266-A of the RPC, as amended by R.A. No. 8353, defines rape as follows:

> Article 266-A. Rape: *When And How Committed.* – Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Hence, the elements necessary to commit the crime of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.[42]

Carnal knowledge refers to the act of a man having sexual intercourse or sexual bodily connections with a woman.[43] It will not even matter if penetration lasted only for a short period of time since the slightest penetration of the female genitalia already consummates the crime of rape.[44]

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42 *People v. Manuel, Jr.*, G.R. No. 247976, May 14, 2021.
43 *People v. Domantay*, 366 Phil. 459, 478 (1999).
44 *People v. Vibar*, 827 Phil. 575, 586 (2018).

The fairly recent case of *People v. Agao*[45] (*Agao*) further clarified:

> x x x [T]he Court now reiterates, even as it clarifies, that rape of a female victim by a male person through penile penetration reaches the consummated stage as soon as the penis penetrates the cleft of the [*labia majora*], also known as the vulval or pudendal cleft, or the fleshy outer lip of the vulva, in even the slightest degree. Simply put, mere introduction, however slight, into the cleft of the [*labia majora*] by a penis that is capable of penetration, regardless of whether such penile penetration is thereafter fully achieved, consummates the crime of rape.
>
> x x x x
>
> x x x [T]he Court clarifies that when jurisprudence refers to "mere touching," it is not sufficient that the penis grazed over the pudendum or the fleshy surface of the *labia majora*. Instead, what jurisprudence considers as consummated rape when it describes a penis touching the vagina is the penis penetrating the cleft of the [*labia majora*], however minimum or slight. Similarly, a mere grazing by the penis of the fleshy portion, not the vulval cleft of the [*labia majora*], will also constitute only attempted rape and not consummated rape, since the same cannot be considered to have achieved the slightest level of penetration. Stated differently, the Court here elucidates that "mere touch" of the penis on the [*labia majora*] legally contemplates not mere surface touch or skin contact, but the slightest penetration of the vulval or pudendal cleft, however minimum in degree.
>
> x x x x
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> Given the foregoing, for as long as the prosecutorial evidence is able to establish that the penis of the accused penetrated the vulval cleft or the cleft of the [*labia majora*] ([*i.e.*], the cleft of the fleshy outer lip of the victim's vagina), however slight the introduction may be, the commission of rape already crossed the threshold of the attempted stage and into its consummation. On the factual appreciation of whether this minimum threshold genital contract is obtained in an allegation of rape, the same is rightly left to the trial court's astute assessment from the entirety of the body of proof presented in each case.[46]

Aside from the above elements, the courts are likewise guided by the following principles in reviewing rape cases:

> (1) [A]n accusation of rape, while easy to make, is difficult to prove and even harder for the person accused, though innocent, to disprove; (2) because rape, by its very nature, involves only two persons, the testimony of the complainant should be scrutinized with greatest caution; (3) the evidence for the prosecution must stand or fall on its own merits and must not be allowed to draw strength from the weakness of the evidence for the

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45 G.R. No. 248049, October 4, 2022.

46 Id.

> defense; and (4) the complainant's credibility assumes paramount importance because her testimony, if credible, is sufficient to support the conviction of the accused.[47]

Thus, the primordial consideration in rape cases is the credibility of the testimony of the victim because the accused may be convicted solely on such testament, provided that such is credible, natural, convincing, and consistent with human nature and the normal course of things.[48] Mindful of these guidelines, the Court rendered a judgment of acquittal in the cases of *People v. Jampas*[49] (*Jampas*) and *People v. Ramirez, Jr.*[50] (*Ramirez*). In both cases, the Court disbelieved the respective testimonies of therein complainants as they lacked details on how they were sexually abused by therein accused.

The Court, in *Agao*, further enjoined the courts to be circumspect in their appreciation of whether rape was consummated through penile penetration, by taking into consideration attendant circumstances such as: "(i) when the victim testifies that she felt pain in her genitals; (ii) when there is bleeding in the same; (iii) when the *labia minora* was observed to be gaping or has redness or otherwise discolored; (iv) when the hymenal tags are no longer visible; or (v) when the sex organ of the victim has sustained any other type of injury."[51]

In here, accused-appellant attaches his cause to the rulings in *Jampas* and *Ramirez*. He urges the Court to overturn his conviction because AAA's simple claim that he inserted his penis into her vagina insufficiently establishes carnal knowledge. To his mind, AAA's testimony was rendered incredible by the absence of any statement indicating that his penis was erect, or that he made a push and pull movement.[52]

The Court remains unpersuaded despite the rulings in *Jampas* and *Ramirez*, mainly because the circumstances therein are not on all fours with the instant case.

In *Jampas*, the Court described the narration offered by therein private complainant as "simplistic" when she merely testified and made a conclusion of law that therein accused had "successfully raped" her.[53] It

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47 Id.
48 Id.
49 610 Phil. 652 (2009).
50 475 Phil. 631 (2004).
51 *People v. Agao*, supra.
52 CA *rollo*, p. 22.
53 *People v. Jampas*, supra at 666.

bears noting that the accused in *Jampas* was acquitted not only because of this plain narration by therein private complainant, but also because her conduct after the incident defied human nature, and her description of where she was purportedly ravaged, appeared to be inexistent.

On the other hand, the testimony of the private complainant in *Ramirez* only mentioned that therein accused "used" her and that he "destroyed" her virginity.[54] She did not provide any other details of her molestation, and even failed to present proof of force or intimidation exerted upon her by therein accused.

In stark contrast, AAA was able to offer a straightforward testimony of how accused-appellant ravished her by laying down beside her, touching her breasts and other parts of her body, and inserting his penis into her private part while covering her mouth. She testified to feeling pain in her vagina after accused-appellant ravaged her. The medical certificate issued by the Northern Mindanao Medical Center corroborated her testimony, as it indicated that she had an annular or gaping hymen with complete laceration at the 4 and 6 o'clock positions. Verily, the courts *a quo* satisfied the guidelines in appreciating the testimony of AAA, a minor victim, as laid down in *Agao*. Moreover, when the testimony of the victim of her defilement is made in a straightforward and candid manner and supported by medical findings, the same will suffice to support the conviction of rape.[55]

The Court notes that accused-appellant challenges the veracity of the findings contained in the medical certificate on the ground that the physician was not presented as witness. However, it must be remembered that the medical examination on the victim and the medical certificate are merely corroborative in character and not essential elements of rape.[56] In the prosecution of rape cases, the material fact or circumstance is the occurrence of the rape.[57] Hence, the non-presentation of the physician who examined AAA and prepared the medical certificate is immaterial since the prosecution was able to establish the fact of rape through AAA's testimony.

In another attempt to exonerate himself from the charge, accused-appellant insists that the prosecution failed to show that he used force, threat, or intimidation against AAA.

Again, the Court is not convinced.

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54 *People v. Ramirez, Jr.*, supra at 648.
55 *People v. Bagsic*, 822 Phil. 784, 799 (2017).
56 *People v. Gutierrez*, 451 Phil. 227, 241 (2003); *People v. Velasquez*, 427 Phil. 454, 461 (2002).
57 *People v. Gutierrez*, id.

In establishing the presence of force, threat, or intimidation, the prosecution must show that voluntariness on the part of the victim during the sexual congress, is sorely lacking, and the accused employed force and intimidation upon the victim to achieve his end.[58] The Court explained:

> In order to establish the element of force and intimidation, the prosecution must prove: a) a complete absence of voluntariness on the part of the victim; and b) that the accused actually employed force and intimidation upon the victim to achieve his end. In rape, **force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. Proof of resistance is not necessary; the victim has no burden to prove that she did all within her power to resist the force and intimidation employed upon her. It being enough that it is of such nature as to wield the victim to submit to the accused's desires.**
>
> **Intimidation includes the moral kind such as the fear caused when threatened with a knife or pistol, or when words employed are of such nature as would incite anxiety or distress leaving the victim without any choice but to surrender. As this Court held in *Nacario v. People*, "[i]ntimidation is a state of mind, which cannot, with [absolute] certainty, be discerned. Whether a person has been intimidated can only be inferred from the simultaneous or subsequent acts of the person subjected thereto." It involves largely an appreciation of the state of mind of the victim at the time of the commission of the crime.** Hence, rather than the appellate courts which relies only on the cold and mute pages of the records which do not graphically convey emotion, the assessment of the trial court must be given binding finality in this respect.[59] (Emphases supplied; citation omitted)

Force, as an element of rape, must be sufficient to accomplish the purposes which the accused had in mind.[60] On the other hand, intimidation results in fear, such that if the victim resists the lustful desire of the accused, something would happen to her at that moment or thereafter, by being threatened with death if she reports the incident.[61] Force or intimidation is relative, and does not rely on the use of a deadly weapon or exertion of physical violence. Such depends on the circumstances availing in the commission of rape, such as the size, age, strength, and relations of the parties. The force or intimidation employed may not be great to the extent of being irresistible, but must only be enough for the accused to achieve his

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58 *People v. Sernadilla*, G.R. No. 201147, September 21, 2022; *People v. Tionloc*, 805 Phil. 907, 915 (2017).

59 *People v. Sernadilla*, id.

60 *People v. Salazar*, G.R. No. 239138, February 17, 2021.

61 Id.

purpose.[62]

The use of intimidation usually explains the absence of any sign of struggle, which would otherwise indicate that the victim fought or tried to fight off her attacker.[63] In *People v. Bohol*,[64] the Court went on to emphasize that the crime of rape pertains to the abuser's exercise of power and control, and a deliberate process of intimidation to keep the victim in a state of fear and humiliation. In this manner, the victim may not exert any resistance despite the abuser being unarmed.[65]

For these reasons, the Court sustains the conclusion made by the CA that accused-appellant employed force and intimidation in satisfying his bestial desire. The mere act of covering AAA's mouth to keep her from shouting for help while he sexually molested her, sufficiently indicated the use of force and intimidation by accused-appellant, thus:

> [T]his Court finds that the evidence on record sufficiently established that accused-appellant employed force, intimidation and threat in carrying out his sexual advances against private complainant. The mere fact that private [complainant] wanted to shout for help but was unable to do so because accused-appellant covered her mouth is already a manifestation that accused-appellant actually forced himself against private complainant. Private complainant felt so helpless that she shivered with fear the whole time accused-appellant was raping her. Clearly, contrary to the accused-appellant's contention, the element of force and intimidation is present in this case.[66]

Finally, accused-appellant casts doubt on AAA's identification of him as the assailant. AAA testified that she did not see his face because of the darkness, but only recognized his voice. He likewise claims that AAA did not identify him in open court.

Again, the argument has no merit.

In *People v. Sanay*,[67] the Court emphasized that identifying the assailant based on familiarity may be deemed reliable, thus:

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62 Id.
63 *People v. Bertulfo*, 431 Phil. 535, 549 (2002).
64 415 Phil. 749 (2001).
65 Id. at 761.
66 *Rollo*, pp. 11-12.
67 G.R. No. 248113, December 7, 2021.

> A victim who was sufficiently acquainted with their assailant due to a prior relationship or association, such as being "barriomates," neighbors, or as the second husband of their grandmother, signifies a certain familiarity with the assailant's physical features, which the victim may easily perceive at the time of the commission of the crime. Accordingly, even when the offense was committed under circumstances that make it difficult for the victim to ascertain the identity of the perpetrator, as in this case where AAA was raped at night, the identification of the accused is deemed credible when the victim is closely familiar with the assailant.[68]

It cannot be gainsaid that AAA is familiar with the voice of accused-appellant, especially when she had the chance to talk to him on two occasions that day. Notable also that there was no other person on the ground floor at that time aside from accused-appellant, since AAA's grandparents were asleep on the second floor. Clearly, AAA had a clear perception that accused-appellant was her abuser, not only because of their relationship, but also on account of her interactions with him that transpired before her harrowing experience.

As regards the allegation that AAA failed to identify him in open court, the same was belied by the records, *viz.*:

> DPP SUMALPONG:
>
> Q: Do you know [XXX]?
> A: Yes.
>
> x x x x
>
> Q: Did you see him inside the Court room today?
> A: Yes.
>
> Q: Where is he?
> A: He is seated 3rd from the right side.[69]

In sum, accused-appellant failed to convince the Court that the prosecution was amiss in establishing that he had carnal knowledge of AAA by means of force and intimidation. There can be no doubt that accused-appellant committed rape under Art. 266-A of the RPC.

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68 Id.
69 TSN, July 21, 2016, p. 4.

Accused-appellant may only be liable for Simple Rape.

Both the CA and the RTC held that the rape committed by accused-appellant was qualified on account of AAA's minority and his being a relative of AAA within the third civil degree consanguinity. On this account, the Court disagrees.

The crime of Qualified Rape is punishable under Art. 266-B(1) of the RPC which reads:

> Article 266-B. *Penalty.* — x x x
>
> x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, **relative by consanguinity or affinity within the third civil degree**, or the common-law spouse of the parent of the victim[.] (Emphasis supplied)

Art. 266-B(1) qualifies the crime of rape when it is committed by a relative by consanguinity or affinity within the third civil degree of a victim below the age of 18. Both qualifying circumstances of minority and relationship should be alleged in the information.[70]

As regards the circumstance of minority, the best evidence to prove the age of the offended party is through a certificate of live birth[71] duly authenticated by the Philippine Statistics Authority (*PSA*).[72]

In here, the prosecution submitted a PSA-certified copy of AAA's Birth Certificate[73] which indicates her birthdate as June 4, 1999. Hence, on February 24, 2015 when the rape incident occurred, AAA was 15 years old, as correctly found by both the CA[74] and the RTC.[75] Hence, AAA was still a

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70 *People v. Lomibao*, 391 Phil. 912, 927-928 (2000).
71 *People v. XXX*, G.R. No. 244048, February 14, 2022, citing *People v. Pruna*, 439 Phil. 440, 470 (2002).
72 *Atup v. People*, G.R. No. 229395, November 10, 2021.
73 Records, p. 36.
74 *Rollo*, p. 10.
75 Records, p. 206.

minor, below the age of 18, when she was sexually abused by accused-appellant.

However, minority alone will not qualify the rape under Art. 266-B(1) of the RPC, as it is required that the offender is a relative of the victim within the third degree of consanguinity. Despite the finding of minority of AAA, the Court is not in agreement with the CA and the RTC in appreciating the qualifying circumstance of relationship.

It is a basic rule that an appeal in a criminal case throws the entire case open for review, that even unassigned errors may be corrected if found in the appealed judgment.[76] The Court finds occasion here to apply this rule on account of the erroneous appreciation by the CA and the RTC of the qualifying circumstance of relationship.

Section 6,[77] in relation to Sec. 9,[78] Rule 110 of the Rules of Criminal Procedure requires that the information must be sufficient. In the event that a qualifying or aggravating circumstance attended the commission of the crime, Sec. 9 ordains that the same should be stated in *ordinary and concise* language, sufficient to inform the accused not only of the crime, but also the qualifying circumstances which attended its commission. The facts alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime.[79]

On the other hand, the relationship cannot increase the crime to Qualified Rape if the information did not specifically allege the relationship. Otherwise, the accused would be deprived of his right to be informed of the nature of the charge against him.[80]

Relevant likewise in this case is the rule in statutory construction that the disjunctive word "or," signifies "disassociation and independence of one thing from the other things enumerated,"[81] unless the context requires a

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76 *People v. Dionaldo*, 739 Phil. 672, 682 (2014); *People v. Arpon*, 678 Phil. 752, 785 (2011).

77 Section 6. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

78 Section 9. *Cause of the accusation.* – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but **in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances** and for the court to pronounce judgment. (Emphasis supplied)

79 *People v. Dasmariñas*, 819 Phil. 357, 373-374 (2017).

80 *People v. Armodia*, 810 Phil. 822, 833 (2017); *People v. Luceriano*, 467 Phil. 91, 106 (2004).

81 *Saludaga v. Sandiganbayan*, 633 Phil. 369, 378 (2010).

different interpretation.[82] When "or" is used, the various members of the enumeration are to be taken separately.[83] Also, the word "or" is significant, in that it indicates an alternative and often connects a series of words or propositions indicating a choice of either.[84] Hence, as a general rule, the terms that come before and after the disjunctive word "or," are different from each other, the intention being, is to provide an alternative option. The exception, however, is that based on the context of its usage, the terms may refer to the same thing or be similar in interpretation.

Regardless of whether the general rule or the exception is applied in determining the intention behind the use of "or" in the Information filed against accused-appellant, its effect on his right to be fully informed of the nature and cause of the charge against him, is the same.

To recall, the subject Information contains the allegation that AAA is a "first cousin *or* relative within the third civil degree of consanguinity"[85] of accused-appellant. Applying the general rule in statutory construction on the use of the word "or," the terms "first cousin" and "relatives within the third civil degree of consanguinity" shall be accorded different, distinct, and separate meanings. This holds true considering that a first cousin is beyond the third degree of consanguinity, hence, "first cousin" and "third degree relative by consanguinity" refer to different relationships.

Relevant at this point, are Arts. 964 and 966 of the Civil Code, which read:

> Art. 964. A series of degrees forms a line, which may be either direct or collateral.
>
> x x x x
>
> A collateral line is that constituted by the series of degrees among ascendants and descendants, but who come from a common ancestor.
>
> x x x x
>
> Art. 966. In the line, as many degrees are counted as there are generations or persons, excluding the progenitor.
>
> x x x x

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82 *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, 554 Phil. 288, 302 (2007).

83 Id.

84 *First Philippine Holdings Corporation v. Securities and Exchange Commission*, G.R. No. 206673, July 28, 2020, 944 SCRA 79, 94.

85 Records, p. 4.

> In the collateral line, ascent is made to the common ancestor and then descent is made to the person with whom the computation is to be made. Thus, a person is two degrees removed from his brother, three from his uncle, who is the brother of his father, **four from his first cousin**, and so forth. (Emphasis supplied)

Accordingly, first cousins are not relatives within the third degree of consanguinity; they are *fourth* degree relatives[86] as they are four degrees removed from one another.

The use of the word "or" in the Information allowed the prosecution an opportunity to indict accused-appellant in the alternative, either as a first cousin *or* a relative within the third civil degree of consanguinity. This cannot be permitted as it did not sufficiently apprise accused-appellant of his precise liability in committing the offense. It must be remembered that the simultaneous presence of the circumstances of minority and relationship elevates the offense of Simple Rape to Qualified Rape, thereby increasing the penalty of Simple Rape from *reclusion perpetua* to death. It is for this reason that Sec. 9, Rule 110 of the Rules of Criminal Procedure requires precision and particularity in stating the qualifying circumstances availing in the commission of the offense. **The Information should be precise as to the relationship between the offender and the victim, such that the averment cannot be stated in the alternative.** More so in this case where being a first cousin will not elevate the crime to Qualified Rape which merits a heavier penalty.

Neither will the Court allow an interpretation of the phrase "first cousins" to mean "relatives within the third degree of consanguinity" based on how the word "or" was used in the Information and made the subject of stipulation.

The Court has observed that the penultimate paragraph of the Information specifically alleged that the circumstance of minority and being a relative within the third degree of consanguinity are attendant in the commission of the crime. Taken together with the preceding paragraph which contained the word "or," the prosecution intended the relationship of "first cousin" to be the same as, and included in the term, "relative within the third civil degree of consanguinity." As previously explained, this is patently an erroneous averment: a first cousin is a relative of the fourth degree of consanguinity, hence, beyond the third degree.

A careful scrutiny of the allegation in the Information would reveal

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[86] See *Mendoza v. Delos Santos*, 707 Phil. 69, 79 (2013).

that it was couched imprecisely, thereby resulting in two inferences: (1) that AAA may *either* be a first cousin or a relative of accused-appellant within the third civil degree of consanguinity; or (2) that AAA, being a first cousin, *is* a relative within the third civil degree of consanguinity. Indubitably, the phrasing of the allegation results in confusion which may not be fully understood by a person of ordinary intelligence such as accused-appellant. As such, accused-appellant was not fully apprised that the charge of rape against him was made serious by the phrase "relative within the third degree of consanguinity," knowing only that he is merely a first cousin of AAA, which should only make him accountable for Simple Rape.

With the imprecision in accusing herein accused-appellant for Qualified Rape under Art. 266-B(1) of the RPC, he cannot be held liable for the same. Since carnal knowledge of AAA by means of force, threat, or intimidation had been established by the prosecution beyond reasonable doubt, accused-appellant may only be liable for Simple Rape.

The Court is not oblivious to the rule enunciated in *People v. Solar*[87] (*Solar*) that the insufficiency or defect in the information may be waived by the accused, and that the appellate court shall decide the appeal depending on whether the accused has already made such waiver. However, the Court will deviate from applying *Solar*.

The rule is settled that the negligence and mistakes of counsel shall bind the client. This however admits of an exception: when such negligence is so gross, reckless, and inexcusable which essentially deprives the clients with their day in court,[88] or when such mistakes would result in serious injustice.[89] Gross negligence must be nothing short of clear abandonment of the client's cause,[90] and involves a thoughtless disregard of consequences without any effort to avoid them.[91] In *Ong Lay Hin v. Court of Appeals*[92] (*Ong Lay Hin*), the Court emphasized that to be appreciated as an exception, the gross negligence of counsel should border on recklessness and utter incompetence, to the extent that the accused was deprived of the right to due process, thus:

> But, there is an exception to this doctrine of binding agency between counsel and client. This is when the negligence of counsel is so gross, almost bordering on recklessness and utter incompetence, that we can safely conclude that the due process rights of the client were violated.

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87 858 Phil. 884 (2019).
88 *De Vera v. People*, UDK-17135, April 20, 2022.
89 *People v. Hernandez*, 328 Phil. 1123, 1143 (1996).
90 *Resurreccion v. People*, 738 Phil. 704, 718 (2014).
91 *People v. Sandiganbayan*, 681 Phil. 90, 121 (2012).
92 752 Phil. 15 (2015).

> Even so, there must be a clear and convincing showing that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. The error of counsel must have been both palpable yet maliciously exercised that it should viably be the basis for disciplinary action.[93]

Ong Lay Hin further explains that the nature of the relationship between a counsel and a client is highly fiduciary, owing to the expectation by the latter, that the counsel understands the law and has a thorough grasp of the facts from which he or she chooses as relevant to advance the legal cause of action or defense to be pursued[94] on behalf of the client.

As such, when counsels affix their signatures on a stipulation of facts pursuant to Sec. 1, Rule 118 of the Rules of Criminal Procedure, they admit, on behalf of their clients, all the facts stated therein, including all changes made thereon.[95] It must be remembered that a stipulation of facts is a judicial admission of all the facts stated therein.[96] Pertinently, Sec. 4, Rule 129 of the Rules of Criminal Procedure provides:

> Section 4. *Judicial admissions.* – An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Indeed, a stipulation of facts by the counsel binds the client, unless (1) the admission was made through palpable mistake, or (2) no such admission was made.[97]

In here, the waiver by accused-appellant of the defect in the Information was made manifest during pre-trial. In the same proceeding, his counsel from the Public Attorney's Office (*PAO*) agreed to the offer of stipulation by AAA's counsel that accused-appellant is a relative within the third civil degree of consanguinity.[98] This admission was made despite AAA's and BBB's statements in their respective Affidavits[99] both dated March 4, 2015, that accused-appellant is AAA's "*ig-agaw*" (cousin).[100] Notable also that the Resolution (On Preliminary Investigation)[101] which

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93 Id. at 25.
94 Id. at 24.
95 *Philippine Education Co., Inc. v. Manila Port Service*, 137 Phil. 664, 667 (1969).
96 Id.
97 *Diego v. Sandiganbayan*, 394 Phil. 88, 99 (2000).
98 Records, pp. 39, 46.
99 Id. at 10-11, 13-14.
100 Id. at 10, 13.
101 Id. at 7-9.

served as basis in the filing of the Information against accused-appellant, also referred to accused-appellant as AAA's first cousin.[102]

Hence, it was gross and palpable mistake on the part of accused-appellant's counsel to admit that AAA is a relative within the third civil degree of consanguinity, despite the documents and the Information referring to accused-appellant only as a first cousin. Surely, We cannot attribute the fault to accused-appellant considering that the determination of relationship by civil degree, involves an application and understanding of the law, particularly the Civil Code. Needless to state, that the rule being considered here – the determination of the relationship by civil degree – is basic which every lawyer ought to know. As such, the admission by accused-appellant's counsel during pre-trial cannot be admitted, it being made through palpable mistake, bordering on recklessness and utter incompetence.

In view thereof, it was erroneous for the RTC to admit the subject stipulation despite being grossly incorrect. Quite appalling, that the RTC even mentioned in its Decision that accused-appellant is liable for Qualified Rape on the basis of the stipulation despite being aware of the true relationship between AAA and accused-appellant:

> As it is, the fact that accused [XXX] is a cousin and a relative of AAA relative [sic] within third civil degree of consanguinity of the private complainant is a stipulated fact.[103]

In a similar manner, the CA also held that "being the cousin of private complainant," accused-appellant is a "relative by third degree of consanguinity."[104] Even the OSG opined that relationship was present as "it was stipulated by both parties that appellant is the cousin or a relative by consanguinity within third civil degree of AAA."[105]

At this juncture, the Court stresses that while parties are allowed to stipulate facts under Sec. 1, Rule 118 of the Rules of Criminal Procedure, they cannot stipulate on erroneous application of the law, especially when all the facts are available for their consideration. Pertinently, the prosecutors should be mindful of their duty under the newly promulgated Code of Professional Responsibility and Accountability (*CPRA*),[106] that their primary

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102 Id. at 7.
103 Id. at 205.
104 *Rollo*, p. 10.
105 CA *rollo*, p. 87.
106 A.M. No. 22-09-01-SC took effect on May 29, 2023 or 15 days after its publication on May 14, 2023. (See Sec. 3, General Provisions, CPRA).

duty is not to convict, but to see that justice is done.[107] Their overzealousness in prosecuting an accused will never justify a trampling of their constitutionally protected right to be fully informed of the nature and cause of the crime being charged.

On the part of the counsels of the accused, especially those coming from the PAO, they should constantly be aware of their fiduciary duty to be competent and diligent in representing their clients. Canon IV of the CPRA, as well as Secs. 1 and 4 thereof, enunciate that:

> CANON IV
> COMPETENCE AND DILIGENCE
>
> A lawyer professionally handling a client's cause shall, to the best of his or her ability, observe competence, diligence, commitment, and skill consistent with the fiduciary nature of the lawyer-client relationship, regardless of the nature of the legal matter or issues involved, and whether for a fee or *pro bono*.
>
> Section 1. *Competent, efficient and conscientious service.* — A lawyer shall provide legal service that is competent, efficient, and conscientious. A lawyer shall be thorough in research, preparation, and application of the legal knowledge and skills necessary for an engagement.
>
> x x x x
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> Section 4. *Diligence in all undertakings.* — A lawyer shall observe diligence in all professional undertakings, and shall not cause or occasion delay in any legal matter before any court, tribunal, or other agency.
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> A lawyer shall appear for trial adequately familiar with the law, the facts of the case, and the evidence to be presented. A lawyer shall also be ready with the object and documentary evidence, as well as the judicial affidavits of the witnesses, when required by the rules or the court.

Finally, there is also a need to remind the members of the bench that although generally, they cannot stipulate for the parties, they can do so when the same contravenes law, morals, good customs, public order, or public policy.[108] Conversely, if there are indications that the stipulations are contrary to law, courts may intervene and strike down the same.

Proper penalty

In view of the patent and grave error in appreciating the circumstance

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[107] Id., Canon II, Sec. 31.
[108] *Tiu v. Platinum Plans Phil., Inc.*, 545 Phil. 702, 710 (2007).

of relationship, the conviction of accused-appellant for Qualified Rape should be modified. Since the prosecution has established carnal knowledge and the employment of force, threat, and intimidation upon AAA, accused-appellant may only be liable for Simple Rape.

With the downgrading of the crime for which accused-appellant is liable, the penalty imposed against him should be amended. Although the penalty imposed by the RTC, which the CA affirmed, is that of *reclusion perpetua* without eligibility for parole, the same was imposed in view of R.A. No. 9346[109] which prohibits the imposition of the death penalty. Hence, the same should be modified that the penalty to be imposed against accused-appellant is *reclusion perpetua* pursuant to Art. 266-B of the RPC.

Correspondingly, the civil damages awarded to AAA are hereby corrected pursuant to *People v. Jugueta*:[110] ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. These amounts shall be subject to 6% interest *per annum* from finality of this Decision, until full payment is made.

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The November 29, 2018 Decision of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR HC No. 01797-MIN is **AFFIRMED** with **MODIFICATION**. The Court finds accused-appellant XXX **GUILTY** beyond reasonable doubt of the crime of Rape under Article 266-A(1)(b) of the Revised Penal Code, and he is **SENTENCED** to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to **PAY** private complainant AAA the following amounts: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. He is further **ORDERED** to **PAY** interest upon the said amounts, at the rate of 6% *per annum* from the finality of this Decision until fully paid.

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

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109 Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines." Approved on June 24, 2006.

110 783 Phil. 806 (2016).

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice